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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 197.

THE BOARD OF SUPERVISORS OF CALHOUN COUNTY, PLAINTIFF IN ERROR,

vs.

W. B. GALBRAITH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSISSIPPI.

FILED OCTOBER 7, 1876.

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1 WILLIAM B. GALBRAITH
v.
BOARD OF SUPERVISORS OF CALHOUN COUNTY.

Pleas had in the district court of the United States for the northern district of Mississippi, at the June term thereof, A. D. 1875, before the honorable Robert A. Hill, judge of said court, sole presiding, at Oxford, in said district.

Be it remembered that William B. Galbraith did on the 25th day of May, A. D. 1874, file in the district court of the United States for the northern district of Mississippi his declaration against the board of supervisors of Calhoun County at Oxford, in said district, in the words and figures following, to wit:

Declaration.

THE UNITED STATES OF AMERICA:

In the circuit court of the United States for the northern district of Mississippi, June term, 1874.

W'm B. Galbraith, a citizen of the State of Tennessee, plaintiff, complains of the board of supervisors of Calhoun County, in the State of Mississippi and district aforesaid, which said supervisors are citizens of the State of Mississippi, residing in the county and district aforesaid, defendants in an action of debt, for that the county of Calhoun, on the 1st day of September, A. D. 1871, by a certain writing under the seal of the said board of supervisors thereto affixed, being the official seal of the clerk of said board, and by the signature of Joel Abney, the president of said board, and countersigned by J. S. Ryan, the clerk
2 thereof, and in pursuance of certain acts of the legislature of the State of Mississippi, to wit, an act approved February 10th, 1860, entitled "An act to aid in the construction of the Grenada, Houston and Easton Railroad," now known and styled the Vicksburg and Nashville Railroad, and an act approved March 25th, 1871, amendatory of said first-named act, and in obedience to a vote of the people of said county at an election held in accordance with the provisions of said acts, acknowledged in the writing hereinafter mentioned, that the said county was indebted unto and promised to pay the said Grenada, Houston and Easton Railroad Company, now known and styled the Vicksburg and Nashville Railroad Company, a corporation existing under and by virtue of the laws of the State of Mississippi, or bearer, the sum of money in said writing mentioned, as follows, to wit, bearing date the 1st day of September, 1871, numbered one, for the sum of one hundred dollars, and payable to the Grenada, Houston and Easton Railroad Company, or bearer, for the sum aforesaid, with interest at the rate of eight per cent., payable as aforesaid, the said writing being one of a series of bonds issued to the Grenada, Houston and Easton Railroad Company, now known and styled the Vicksburg and Nashville Railroad Company, to aid in the construction of their said railroad in accordance with the acts of the legislature and vote of the people of Calhoun County, as aforesaid, said bond being payable at the agency of said company in the city of New York, on the first day of September, 1873, together with interest
3 from the date thereof at the rate of eight per cent. per annum, payable semi-annually, on the 1st day of March and September, A. D. 1873, and on the day aforesaid did by the signature of the said

president and clerk execute coupons by which the said county promised to pay to the said company, or bearer, the said interest in sums of four dollars each on the day of the maturity of said coupons respectively, as follows, to wit, two coupons attached to the bond above described, and numbered one, payable to the Grenada, Houston & Eastern Railroad Company, or bearer, at their agency in the city of New York, which said coupons were attached to said bond, and said bond, with the said coupons attached, were then and there delivered to the said company, and were on the day and year aforesaid, at the county and district aforesaid, for a valuable consideration, delivered to the plaintiff, and of which profert is now made, who then and there became the owner and bearer thereof.

And whereas, also, the said defendant, on the day and year aforesaid, at the district aforesaid, made their certain other writing or bond for the sum of one hundred dollars, signed and countersigned and sealed as aforesaid, and being a part of the series of bonds aforesaid issued for the purpose and under the authority aforesaid, payable to the Grenada, Houston and Eastern Railroad Company, or bearer, on the first day of September, 1873, with interest on said sum at 8 per cent. per annum, payable semi-annually as aforesaid, to wit, on the 1st day of March & September, 1873, and did then and there make their certain coupons attached to said bond above described, and numbered two, payable to the Grenada, Houston and Eastern Railroad Company, say two coupons, each for the sum of four dollars, each which said coupons were attached to said bond, and said bond, which said coupons were then & there delivered to the said company, & by them delivered to the plaintiff for value received, and of which profert is now made, and who thereby became the owner and bearer thereof;

4

And whereas, also, the said defendant, on the day and year aforesaid, made their certain other writing or bond for the sum of five hundred dollars, signed and countersigned and sealed as aforesaid, and being a part of the series of bonds aforesaid issued for the purpose and under the authority aforesaid, payable to the Grenada, Houston and Eastern Railroad Company, at their agency in the city of New York, on the first day of September, 1873, for the sum of five hundred dollars aforesaid, numbered one, and which was then and there delivered to the said company and by them delivered to the plaintiff, and of which profert is now made, for a valuable consideration, who thereby then and there became the owner and bearer thereof;

And whereas, also, the said defendant, on the day and year aforesaid, at the district aforesaid, made their certain other writing or bond for the sum of five hundred dollars, signed and countersigned and sealed as aforesaid, and being a part of the series of bonds aforesaid issued for the purpose and under the authority aforesaid, payable to the Grenada, Houston and Eastern Railroad Company, with interest on said sum at 8 per cent. per annum, payable semi-annually, to wit, on the first day of March and September, 1873, at their agency, in the city of New York, for the sum of five hundred dollars aforesaid, due on the first day of September, 1873, which said bond was then and there delivered to the said company and by them delivered to plaintiff, and of which profert is now made, for a valuable consideration, who thereby then and there became the owner and bearer thereof;

5

And whereas, also, the said defendant, on the day and year aforesaid, at the district aforesaid, made their certain other writing or bond for the sum of five hundred dollars, signed and countersigned and sealed as aforesaid, and being a part of the series of bonds aforesaid issued for the purposes and under the authority aforesaid, payable to the Grenada,

Houston and Eastern Railroad Company, or bearer, at their agency in the city of New York, with interest on said sum at 8 per cent. per annum, payable semi-annually, on the first days of March & September, 1873, due on the first day of September, 1873, which said bond was dated 1st September, 1871, & numbered two, and was then & there delivered to the said company, and by them delivered to plaintiff for a valuable consideration (and of which profert is now made), and who thereby then and there became the owner and bearer thereof;

And whereas, also, the said defendant, on the day and year aforesaid, at the district aforesaid, made their certain other writing or
6 bond for the sum of five hundred dollars, signed and countersigned and sealed as aforesaid, and being a part of the series of bonds aforesaid issued for the purpose and under the authority aforesaid, payable on the 1st day of September, 1873, to the Grenada, Houston and Eastern Railroad Company, or bearer, at their agency in the city of New York, with interest on said sum at eight per cent. per annum, payable semi-annually, on the first days of March and September, 1873, which said bond was dated on the 1st day of September, 1871, & numbered three, and was then & there delivered to the said company, and by them delivered to plaintiff for a valuable consideration, who thereby then & there became the owner and bearer thereof, and of which profert is now made;

And whereas, also, the said defendant, on the day & year aforesaid, at the district aforesaid, made their certain other writing or bond for the sum of five hundred dollars, signed and countersigned, and sealed as aforesaid, and being a part of the series of bonds aforesaid, issued for the purposes and under the authority aforesaid, dated September 1st, 1871, payable to the Grenada, Houston and Easton Railroad Company, or bearer, at their agency in the city of New York, on the first day of September, 1873, with interest on said sum at eight per cent. per annum, payable semi-annually, on the first days of March and September, 1873, and numbered four, and was then and there delivered to the said company, and by them to plaintiff, for a valuable consideration, who
7 thereby then and there became the owner thereof, and of which profert is now made.

And whereas, also, the defendant, on the day and year aforesaid, at the district aforesaid, made their certain other writing or bond for the sum of five hundred dollars, signed and countersigned, and sealed as aforesaid, and being a part of the series of bonds aforesaid, issued for the purposes and under the authority aforesaid, dated September 1st, 1871, and payable to the Grenada, Houston and Easton Railroad Company, or bearer, at their agency in the city of New York, on the first day of September, 1873, with interest on said sum at eight per cent. per annum, payable semi-annually, on the first days of March and September, 1873, and numbered five, and was then and there delivered to the said company, and by them to plaintiff, for a valuable consideration, who thereby then and there became the owner and bearer thereof, and of which profert is now made; all of which bonds and coupons, and the sums of money specified therein, with the interest thereon, at eight per cent. per annum, is due and unpaid, yet the said several sums of money, though due as aforesaid for principal and interest, have not been paid by said county, nor has said county provided any means for the payment thereof, although often requested so to do, to the damage of the plaintiff of twenty thousand dollars; wherefore he brings suit, &c.

And whereas, also, the said defendant, on the day and year aforesaid, to wit, on the first day of September, 1871, at the district afore-

said, made certain other bonds, being of the series aforesaid, being severally payable at certain dates therein fixed, with the like rate of interest payable aforesaid, and did also, at the said time and place, make his certain promises in writing, called coupons, for the payment of said interest, duly signed and countersigned as aforesaid, and bearing numbers to correspond with the numbers of said bonds, and delivered the said bonds, with said coupons, to the said company, being detached from said bonds, afterwards, on the day and year aforesaid, came to the hands of the said plaintiff by delivery, for a valuable consideration, and in their due course of business, and thereby the said plaintiff became and is the lawful bearer thereof; and to avoid prolixity, the said coupons are here described as follows: One hundred and eight coupons for twenty dollars each, due and payable 1st March, 1872, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118; and fifteen coupons for four dollars each, payable on the first day of March, 1872, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, & 15; and one hundred and sixteen coupons, for twenty dollars each, payable on the first day of September, 1872, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118; and fourteen coupons, for four dollars each, payable on the first of September, 1872, numbered 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15; and twenty-four coupons, for twenty dollars each, payable on the first day of March, 1873, numbered 25, 26, 27, 32, 65, 68, 73, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95; and five coupons, for twenty dollars each, payable on the first day of September, 1873, numbered 5, 6, 7, 8, 9; and six coupons, for twenty dollars each, payable on the first day of March, 1874, numbered 6, 7, 8, 9, 49, 50; and six coupons, for four dollars each, payable on the first day of March, 1874, numbered 4, 11, 12, 13, 14, & 15; and although the times for the payment of said several coupons have long since elapsed, yet the said defendant hath not paid the same, nor any part thereof, nor has the said defendant provided any means to pay the same, but so to do hath wholly failed and refused, and still refuses, whereby a right hath accrued to the said plaintiff to demand of the said defendant the sum of eight thousand and twenty-eight dollars, being the aggregate sum due as aforesaid, and the interest thereon, at eight per cent. per annum.

And whereas, also, the said defendant, on the first day of May, 1874, was indebted to the said plaintiff in the further sum of ten thousand dollars, for so much money before that time paid out and expended to and for the use of said defendant, and at his special instance and request to be paid by the defendant when requested.

And for that whereas, also, the said defendant, on the day and year last aforesaid, was indebted to the plaintiff in the further sum of ten thousand dollars, for so much money before that time loaned by the plaintiff to the defendant, and at his special instance and request, and to be paid by the said defendant when he should be thereunto requested, yet the said defendant, although the said sums of money have long since

been due, hath wholly failed and refused to pay the same or any part thereof, although often requested so to do, to plaintiff's damage ten thousand dollars. Wherefore plaintiff sue and pray judgment in his favor against the said defendant, for the sums of money aforesaid, with interest thereon at eight per cent. per annum from the time due until paid, together with the costs of this suit, &c.

MARTIN & BATES AND
HARRIS & GEORGE,
Att'ys for Pl'ffs.

11 This action is founded upon defendant's five several writings or bonds, made and dated 1st Sept., 1871, by the Grenada, Houston & Eastern Railroad Company, at their agence in the city of New York, payable on 1st Sept., 1873, for five hundred dollars each, bearing interest at 8 per cent. per annum, payable semi-annually, on 1st March and September, 1873, a copy of which bond is hereto annexed, except as to the numbers thereof.

Also, two other writings or bonds made by the same, on the same day, due and payable at the same time & place, bearing the same interest, for one hundred dollars, & payable to the same, which two said bonds are in the same words and figures of the said copy hereto annexed, except as to the numbers and amounts thereto, which latter two bonds have each attached thereto two coupons for four dollars each, a copy of which coupons is hereto annexed, except as to the numbers and the time of payment.

Also, two hundred and fifty-nine writings called coupons, for twenty dollars each, a copy of which, except as to the numbers and time of payment, is hereto annexed.

And also thirty-nine writings, called coupons, for four dollars each, a copy of which is herewith filed and hereto annexed, except as to the number and time of payment, making aggregate sum of bonds and coupons, besides interest due thereon, of $8,028.00, the original of which bonds and coupons will be exhibited to the court on the trial of this cause.

MARTIN & BATES AND
HARRIS & GEORGE,
Att'ys for Pl'ffs.

12 *Copy of bond mentioned and attached to plaintiff's declaration, to wit:*

BOND No. .

County of Calhoun, State of Mississippi.

500.] [500.

Be it known that the county of Calhoun, State of Mississippi, is indebted unto and promises to pay the Grenada, Houston and Eastern Railroad Company, or bearer, at the agency of said company in the city of New York, two years from the date hereof, five hundred dollars, lawful money of the United States of America, with interest at the rate of eight per cent. per annum, payable semi-annually on the first day of March and September of each year, on the presentation and surrender of the proper coupon hereto annexed.

This bond is one of a series of bonds issued and delivered to the Grenada, Houston and Eastern Railroad Company by Calhoun County, to meet and pay off the amount subscribed by said county to the capital stock of the railroad company aforesaid, in pursuance of an act of the legislature of the State of Mississippi entitled "An act to aid in the construction of t'e Grenada, Houston & Eastern Railroad," approved Feb. 10th, 1860, and of an act amendatory thereof, passed March 25th, 1871, and in obedience to a vote of the people of said county at an election held in accordance with the provisions of said acts.

In witness whereof the board of supervisors of said county have caused the signature of the president of said board to be hereto
13 affixed, countersigned by the clerk, with his official seal affixed, and who have also signed the coupons hereto attached at their office in Pittsboro', this first day of Sept'r, 1871.

(Signed) JOEL ABNEY,
Pres't B'd of Supervisors.

J. S. RYAN, *Clerk.*

(Across the face:) 500.

Coupon.

UNITED STATES OF AMERICA:

$4.00.] [$4.00

The county of Calhoun will pay to the Grenada, Houston & Eastern Railroad Company, or bearer, four dollars at their agency in the city of New York, on the 1st day of March, 18 , being six months' interest on bond No. 1.

(Signed) JOEL ABNEY,
Pres't B'd Supervisors.

J. S. RYAN, *Clerk.*

Coupon.

20.] [20.

The county of Calhoun will pay to the Grenada, Houston & Eastern Railroad Company, or bearer, twenty dollars at their agency in the city of New York, on the first day of September, 1873, being six months' interest on bond No. 1.

(Signed) JOEL ABNEY,
Pres't B'd Supervisors.

J. S. RYAN, *Clerk.*

The foregoing declaration is endorsed as follows, to wit:
Filed & summons issued 25 May, 1874.

G. R. HILL, *Clerk.*

And on the same day the declaration was filed, to wit, the 25 day of May, 1874, the plaintiff sued out of said court his summons, in the words & figures following, to wit:

14 *Summons.*

The President of the United States to the marshal of the northern district of Mississippi, greeting:

We command you to, without delay, *to* summon the board of supervisors of Calhoun County, citizen' of the State of Mississippi, residing in the northern district thereof, that they be and appear before the district court of the United States, to be held at the town of Oxford, for the said northern district of Mississippi, on the first Monday of June next, to answer to the complaint of W'm B. Galbraith, citizen of the State of Tennessee, and that they do file their plea or defence with the clerk of said court on or before the meeting of the same. or judgment will be given against them by default, and have then there this writ.

Witness the honorable Robert A. Hill, judge of the district court of the United States for the northern district of Mississippi, at Oxford, the first Monday of December, A. D. 1873, and 98 year of the Independence of the United States.

Issued the 25th day of May, 1874.

[SEAL.] G. R. HILL, *Clerk.*

The foregoing summons is endorsed as follows, to wit:

UNITED STATES OF AMERICA,
Northern District of Mississippi:

This action is brought to recover, on bonds by the county of Calhoun, subscription to Houston & Eastern R. R. Co., in the aggregate,
15 without interest, for the sum of $8,028. Said sum of money and interest thereon is the demand.

G. R. HILL, *Clerk.*

Executed the within process this day personally on the within defendants by deliv'ing to Joel Abeney, president of the board of supervisors of said county, at his residence in the county of Calhoun, a true copy thereof May 27th, 1874, 8 o'clock a. m.

J. H. PIERCE,
U. S. Marshal,
By J. W. JONES,
Deputy.

On the 3 day of June, A. D. 1874, the same being a day of the regular June term, A. D. 1873, an order was entered in said cause in the words and figures following, to wit:

Order.

W'M B. GALBRAITH
v. } 3107.
BOARD OF SUPERVISORS OF CALHOUN CO.

For sufficient cause shown, it is ordered by the court that the defendants have leave of ninety days within which to plead as of this term.

And afterwards, on the 13th November, 1874, the defendant filed its pleas numbered 1, 2, 3, 4, 5, 6, 7, 8, & 9 to plaintiff's declaration, which said pleas are in the words and figures following, to wit:

District court at Oxford, June term, 1874.

THE UNITED STATES OF AMERICA,
Northern District of Mississippi:

No. 1.

16 WM B. GALBRAITH
v. } 3107.
BOARD OF SUPERVISORS OF CALHOUN COUNTY.

And the said defendant, by attorney, came and defends the wrong and injury when, &c., and says that it does not owe said sums of money above demanded, or any part thereof, in manner and form as said plaintiff hath above thereof complained, and of this said defendant puts itself upon the country, &c.

H. A. BARR,
Att'y for Def.

No. 2.

And for further plea in this behalf said defendant says actio non, because it says that the said bonds and coupons in said declaration mentioned were executed and issued without any power or authority on the part of said board to execute and issue the same, in this, that the only authority conferred upon said board to execute and issue bonds and coupons in aid of the construction of the Grenada, Houston & Eastern Railroad was conferred by the said act of the legislature of Mississippi of the 25th of March, 1871, entitled "An act to amend an act to aid in the construction of the Grenada, Houston & Eastern Railroad," and said defendant in fact saith that by said act the said board was authorized and empowered to execute and issue bonds & coupons in aid of said road, "payable to the president and directors of the Grenada, Houston & Eastern Railroad Company and their successors and assigns," but not to the Grenada, Houston and Eastern Railroad Company, or bearer, in manner and form as the bonds & coupons in said declaration men-
17 tioned and made payable, contrary to said act. And so said defendant saith that said bonds and coupons were executed and issued without authority and are void. And this said defendant is ready to verify.

Wherefore he, &c.

H. A. BARR,
Att'y for Def't.

No. 3.

And for further plea in this behalf said defendant says actio non, because he says that said board of supervisors of Calhoun County had no power or authority to execute and issue the bonds & coupons in said declaration mentioned; and this the said defendant is ready to verify.

Wherefore, &c.

H. A. BARR,
Att'y for Def.

No. 4.

And said defendant for further plea in this behalf says actio non, because it says that said bonds and coupons in said declaration mentioned

were issued in pursuance of certain acts of the legislature of Mississippi, to wit, an act approved the 10th February, 1860, entitled "An act to aid in the construction of the Grenada, Houston & Eastern Railroad"; and an act of the 25th March, 1871, entitled "An act to amend an act entitled 'An act to aid in the construction of the Grenada, Houston and Eastern Railroad.'"

And said defendant saith that the said bond & coupons were issued the 1st September, 1871, upon the credit of the said county of Calhoun, in said State, in aid of the Grenada, Houston & Eastern Railroad Company, a corporation in the said State.

And said defendant further saith that said bonds & coupons
18 were so issued without the assent of two-thirds of the qualified voters of the county of Calhoun ascertained at any special or general election held in said county. And this the said defendant is ready to verify.

Wherefore, &c.

H. A. BARR,
Att'y for Def't.

No. 5.

And for further plea in this behalf said defendant says actio non, because it says that the said bonds and coupons in said declaration mentioned were issued in pursuance of certain acts of the legislature of the State of Mississippi, to wit, an act approved the 10th February, 1860, entitled "An act to aid in the construction of the Grenada, Houston & Eastern Railroad"; and an act of the 25th March, 1871, entitled "An act to amend an act entitled 'An act to aid in the construction of the Grenada, Houston & Eastern Railroad,'" and of a certain vote ordered and held in the said county of Calhoun, in October, 1869, upon the proposition to subscribe on the part of said county for one hundred thousand dollars of capital stock in said railroad company and of a subscription for said amount of stock in said railroad company by the board of police of said county for the said county, which said subscription was made on the 1st January, 1870, and said defendant says that said bonds & coupons were issued as aforesaid on the 1st September, 1871, upon the credit of the said county of Calhoun, in said State, in aid of said Grenada, Houston & Eastern Railroad Company, a corporation in said State. And said defendant further saith that said bonds & cou-
19 pons were so issued without the assent of two-thirds of the qualified voters of the said county of Calhoun, ascertained at any special or general election held in said county. And this the said defendant is ready to verify.

Wherefore, &c.

H. A. BARR,
Att'y for Def't.

No. 6.

And for further plea in this behalf said defendant says actio non, because it says that certain acts were passed by the legislature of Mississippi in aid of the Grenada, Houston & Eastern Railroad, to wit, an act approved the 10th February, 1860, entitled "An act to aid in the construction of the Grenada, Houston & Eastern Railroad"; and an act entitled "An act to amend an act entitled 'An act to aid in the construction of the Grenada, Houston & Eastern Railroad,'" adopted the 25th March, 1871.

And said defendant in fact saith that in pursuance of said act of the

10th February, 1860, the board of police of the said county of Calhoun at a regular term thereof, held at the court-house in said county on the 14th May, 1860, made an order submitting to the qualified voters of said county of Calhoun a proposition for a subscription on the part of said county for one hundred thousand dollars of the capital stock in said railroad company at an election to be held in said county on the 1st Monday in August, 1860, and in accordance with said act of the 10th February, 1860, and the said order, an election was duly held in said county on the 1st Monday in August, 1860, and a majority of said voters in said county then and there voted against said proposition.

And afterwards, and after a majority of the qualified voters of said county had so voted against said proposition and without any authority to order another election, the said board of police, at a special meeting on, to wit, the 2d September, 1869, made another order for another election upon the proposition for a subscription on the part of said county for one hundred thousand dollars of capital stock in said railroad company, to be held in said county on the 25th October, 1869, and an election was then held under that order; and at said last election a majority of the voters of said county voted in favor of said proposition, and in pursuance of said last-mentioned vote the said board, on or about the 1st January, 1870, subscribed in behalf of said county for one hundred thousand dollars of capital stock in said railroad company.

And afterwards in pursuance of said last-mentioned vote and subscription for stock, and under color of authority of said acts of the legislature, the board of supervisors of said county on, to wit, the 1st of September, 1871, issued a series of bonds with coupons of interest attached for said amount of said subscription.

And said defendant avers that the bonds & coupons in said declaration mentioned are part of said series of bonds & coupons so issued as aforesaid, so that said defendant saith that the said bonds and coupons were executed and issued by said board of supervisors without any power or authority and are void. And this the said defendant is ready to verify.

Wherefore, &c.

H. A. BARR,
Att'y for Def't.

No. 7.

And for further plea in this behalf the said defendant says, actio non: Because it says that certain acts were passed by the legislature of Mississippi in aid of the Grenad', Houston & Eastern Railroad, to wit, an act approved the 10th February, 1860, entitled "An act to aid in the construction of the Grenada, Houston & Eastern Railroad"; and an act of the 25th March, 1871, entitled "An act to amend an act entitled 'An act to aid in the construction of the Grenada, Houston & Eastern Railroad.'"

And said defendant says that in pursuance of said act of the 10th Feb'y, 1860, the board of police of the said county of Calhoun, at a regular term thereof held at the court-house in said county, on the 14th May, 1860, made an order in accordance with the said act of the 10th February, 1860, submitting to the qualified electors of said county of Calhoun a proposition for a subscription on the part of said county for one hundred thousand dollars of the capital stock in said railroad company, at an election to be held on the 1st Monday in August, 1860, and

in accordance with said act of the 10th Feb'y, 1860, and the said order, an election was duly held in said county on the 1st Monday in August, 1860, and a majority of the then qualified electors in said county then and there voted against said proposition.

22 And said defendant avers that on the 10th Feb'y, 1860, and during the year of 1860, the qualified electors in said county were the free white male persons of the age of 21 years and upwards, citizens of the United States, and residents of this State one year, and of said county four months; and said white male persons were the persons who voted at said election, and were the persons to whom said proposition was intended, by said act of the 10th Feb'y, 1860, to be submitted as qualified electors.

And said defendant further avers that on the 10th Feb'y, 1860, and during the year of 1860, there were a large number of persons in said county of African descent who were then and there slaves and not citizens of the United States or of this State, and were not entitled to vote at any election, and were not qualified electors, and were not the persons to whom said proposition was intended by said act of the 10th Feb'y, 1860, to be submitted as qualified electors. And afterwards, and after the said election, the said slaves were emancipated, and the males of said emancipated slaves of the age of 21 years or upwards were made qualified electors; and said defendant avers that there were in said county on the 25th October, 1869, many emancipated slaves of the age of 21 years or upwards.

And after said emancipation and after the males of said emancipated slaves of the age of 21 years and upwards became qualified electors in said county, to wit, on the 22d September, 1869, the board of po-

23 lice of said county made another order submitting to the then qualified electors of said county a proposition for a subscription on the part of said county for one hundred thousand dollars of capital stock in said railroad company at an election to be held on the 25th October, 1869, and under said order an election was then held, and at said last election a majority of the then qualified electors voted in favor of said proposition, and in pursuance of said last-mentioned vote the said board of police subscribed in behalf of said county for one hundred thousand dollars of capital stock in said railroad company on, to wit, the 1st January, 1870.

And afterwards, in pursuance of said last-mentioned vote and subscription for stock, and under color of authority of said acts of the legislature the board of supervisors of said county on, to wit, the 1st September, 1871, issued a series of bonds with coupons of interest attached, for said amount of said subscription.

And said defendant avers that the bonds & coupons in said declaration mentioned are a part of said series of bonds & coupons so issued as aforesaid, so that defendant says that said coupons & bonds were issued without any power or authority and are void. And this he is ready to verify.

Wherefore, &c.

H. A. BARR,
Att'y for Def.

No. 8.

And for further plea in this behalf said defendant says, actio non, because it says that the only authority that said board of

24 supervisors had to execute and issue bonds and coupons in aid

of the construction of the Grenada, Houston & Easton Railroad was conferred by an act of the legislature of Mississippi of the 25th March, 1871, entitled "An act to amend an act entitled 'An act to aid in the construction of the Grenada, Houston & Easton Railroad,'" and under and by virtue of said act said board had power only to execute and issue bonds & coupons to meet, pay off, and discharge, subscription of said county of Calhoun for capital stock in the Grenada, Houston & Eastern Railroad Company.

And said defendant avers that the said bonds and coupons in said declaration mentioned were not executed and issued to meet, or pay off, or discharge any subscription of said county of Calhoun for capital stock in said railroad company. Wherefore said defendant says said bonds & coupons were issued without any authority or power to issue the same & are void. And this said defendant is ready to verify.

Wherefore, &c.

H. A. BARR,
Att'y for Def't.

No. 9.

And the said defendant comes and says that the said bonds & coupons, and debts, and undertakings in said declaration mentioned and described, are not, nor are either of them, or any of them, the act and deed of the said county of Calhoun, or of the said board of supervisors, or of the board of police of said county, or of the lawful
25 authorized president or clerk, or any officer thereof, and have no legal binding force upon said county or board of supervisors, and are null and void, and of this they put themselves upon the country.

H. A. BARR,
Att'y for Def.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

Personally appeared before me, J. S. Ryan, United States commissioner, duly appointed and commissioned, Joel Abney, president of the board of supervisors of Calhoun County, who made oath in due form of law that the facts set forth in the foregoing plea are true, as he is advised, informed, and believes.

JOEL ABNY,
Presid't, &c.

Subscribed & sworn to before me this 5th day of October, 1874.

J. S. RYAN,
U. S. Commissioner.

(Endorsed on the foregoing pleas is the following:) Pleas 1, 2, 3, 4, 5, 6, 7, 8, & 9. Filed Nov. 13, 1874. G. R. Hill, clerk.

And afterwards, to wit, on the 11th day of December, 1874, a replication and demurrer was filed in said cause to defendant's pleas in the words and figures following, to wit:

26 *Replication &c., to pleas.*

In the circuit court of the United States, northern district of Mississippi. December term, 1874.

W. B. GALBRAITH
v.
BOARD OF SUPERVISORS OF CALHOUN COUNTY.

Replication to 1 plea.

And the said plaintiff, for replication to the plea of the defendant

first above pleaded, wherein the defendant puts itself upon the country, says he doth the like.

Demurrer to 2 plea.

And the said plaintiff as to the plea of the said defendant secondly above pleaded says, precludi non, because he says that the said plea is not sufficient in law, and therefore he demurs to the same and for cause of demurrer assigns:

1st. That said plea contains no matter or thing whereby the plaintiff's right to recover is barred or precluded.

2d. It presents an issue immaterial and which is otherwise purely matter of law, arising on the face of the declaration, wherefore he prays judgment.

And as to the plea of the defendant thirdly above pleaded the plaintiff says, precludi non, because he says the same is insufficient in law, and therefore he demurs to said and assigns for cause of demurrer:

1st. Said plea contains no averment of any act contrary to nor any omission whereby the authority conferred by a public statute has been exceeded or lost, or whereby the plaintiff's right to recover in this
27 suit is impaired.

2d. It does not appear by said plea whether the matters relied on is of law or fact.

3d. The plea is uncertain, presenting no definite issue.

And the plaintiff demurs to the 4th plea of the defendant and for cause assigns:

1st. The acts of the legislature in said plea mentioned do not require the assent of $\frac{2}{3}$ of the legal voters of the said county to the issuance of the bonds sued on.

2d. Said plea does not state when the indebtedness for subscription was incurred, whether before or after the passage of the said act of 25th of March, 1871.

3d. Said plea states no matter or thing in bar of plaintiff's right of action.

And the said plaintiff demurs to the 5th plea of the defendant, and for cause assigns:

1st. That it appears by the said act of 1860 that the assent of $\frac{2}{3}$ of the legal voters to the subscription for stock in said railroad company was not required to authorize such subscription.

2d. The said act of 1860 is, & was at the time of said election, a valid and subsisting law, and authorized subscription for stock in said railroad company, upon which said bonds and coupons might legally issue, as appears by the said act of the 25 of March, 1871.

28 And the plaintiff demurs to the 6th plea of the defendant and for cause assigns:

1st. There is no matter alleged in said plea affecting the plaintiff's right to recover.

2d. The plea shows a valid election and a valid subscription under the said act of 1860 and alleges nothing in avoidance.

3d. The said plea does not state that the propositions and conditions or terms submitted to the voters of said county in 1860 were the same in substance and effect which were submitted to said voters in 1869, nor does it set forth the terms and conditions which were submitted in 1860.

And the said plaintiff demurs to the 7th plea of the defendant & for cause assigns:

No. 12.

And for further plea in this behalf said defendant says that on the 10th of Feb'y, 1860, the legislature of the State of Mississippi passed an act entitled "An act to be entitled 'An act to aid in the construction of the Grenada, Houston and Eastern Railroad,'" and that afterwards, to wit, on the 25th March, 1871, the legislature of said State passed another act entitled "An act to amend an act entitled 'An act to aid in the construction of the Grenada, Houston and Eastern Railroad.'"

And said defendant says that the board of supervisors of the said county of Calhoun subscribed for one hundred thousand dollars
33 of capital stock in said railroad company, and issued a series of bonds and coupons attached thereto to meet and pay off said subscription under color of the authority of said acts, and under no other authority, and that the bonds and coupons in the said declaration mentioned are a part of said series of bonds and coupons so issued as aforesaid.

And said defendant further avers that prior to the making of said subscription, an election upon the proposition of the subscription aforesaid was held in said county, and that a majority of those who voted at said election voted in favor of the same, but said defendant avers that no notice of said election was given in three of the precincts of said county, to wit, the precinct of Banner, Lamar, and Sarepta, and that said three precincts embraced a large part of the territory, and a voting population of said county, to wit, more than one-third of the voting population of said county. And this said defendant is ready to verify.

Wherefore, &c.

H. A. BARR,
Att'y for Def't.

No. 13.

And for further plea in this behalf said defendant says that certain acts were passed by the legislature of the State of Mississippi in aid of the Grenada, Houston and Eastern Railroad, to wit: an act approved the 10th Feb'y, 1860, entitled "An act to aid in the construction of the Grenada, Houston and Eastern Railroad," and an act of the 25th March, 1871, entitled "An act to amend an act entitled 'An act to aid in
34 the construction of the Grenada, Houston and Eastern Railroad.'"

And said defendant says that in pursuance of the said act of the 10th Feb'y, 1860, the board of police of the said county of Calhoun, consisting of five persons, duly elected as members of said board by the qualified electors of said county, at the court-house in said county on the 14th day of May, 1860, made an order submitting to the qualified electors of said county of Calhoun a proposition for a subscription on the part of said county for one hundred thousand dollars of the capital stock in said Grenada, Houston & Eastern Railroad Company, at an election to be held in said county on the first Monday in August, 1860, and in accordance with said act of the 10th Feb'y, 1860, and the said order, an election was duly held in said county on the 1st Monday in August, 1860, and a majority of said qualified electors then and there at said election voted against said proposition, and thereupon the said board of police declined and refused to make any subscription for capital stock in said railroad company.

And said defendant says that there was, during the entire year of

1869, a duly elected and qualified board of police in and for the said county, consisting of five persons, to wit, M. M. Vaughan, J. J. May, J. P. Wilson, J. H. Reed, and H. F. Watson, who had been duly elected to said office by the qualified voters of said county at the regular election in said county in October, 1868, but the military commander
35 of the State of Mississippi, so assigned to command by the General of the Army of the United States, in or about the month of June, 1869, assuming and pretending that he had the right to appoint another board of police for said county, did attempt and pretend to create such other board of police in said county, by directing certain persons, to wit, W. L. Harrelson, John A. Winter, J. A. Reed, and A. G. Baxton, to act as such members of a board of police in said county; and the said Harrilson, Winter, Reed, & Baxton, without being elected to said offices by the qualified electors of said county, but acting solely under the directi'n of said military commander, did pretend that they constituted a board of police in said county, and, so pretending, did meet together in said county on the 2d of September, 1869, and make an order for an election upon the proposition for a subscription on behalf of said county for one hundred thousand dollars of capital stock in said railroad company, to be held on the 25th October, 1869, and did cause an election to be held on the 25th October, 1869, upon said proposition, but without giving thirty days' notice, or any notice whatever, of the time of holding said election last mentioned, and of the amount proposed to be subscribed, and of the number of installments in which the subscription was to be paid; and did thereby, then and there, procure a majority of those who voted at said last-mentioned election to vote in favor of said proposition.

36 And said defendant says that under color of the authority of said last-mentioned vote, and the said acts of the legislature, one hundred thousand dollars of the capital stock in said railroad company was subscribed for, and a series of bonds, and coupons attached, was issued to meet and pay off said subscription; and defendant avers that the bonds and coupons in said declaration mentioned were a part of said series of bonds and coupons so issued as aforesaid, and this said defendant is ready to verify.

Wherefore defendant prays judgment, &c.

H. A. BARR,
Att'y for Def.

No. 11.

And for further plea in this behalf, said defendant says that on the 10th Feb'y, 1860, the legislature of the State of Mississippi passed an act entitled "An act to be entitled 'An act to aid in the construction of the Grenada, Houston and Eastern Railroad,'" by which the board of police of said county of Calhoun was authorized to subscribe for capital stock in said Grenada, Houston and Eastern Rail Company, not to exceed in amount two hundred thousand dollars upon certain conditions mentioned in said act; & afterwards, to wit, on the 25th March, 1871, the legislature of said State passed another act entitled "An act to amend an act entitled 'An act to aid in the construction of the Grenada, Houston and Eastern Railroad,'" by which the board of super-
37 visors of said county of Calhoun was authorized to issue bonds, with coupons attached, payable to the president and directors of the Grenada, Houston and Eastern Railroad Company and their successors and assigns, to meet, pay off, and discharge such subscription for stock in said railroad company by said county.

And said defendant says that said board of supervisors subscribed for one hundred thousand dollars of capital stock in said railroad company, and issued a series of bonds, with coupons attached, to meet, pay off, and discharge said subscription under color of the authority of said act of the legislature and under no other authority; and said defendant says that the bonds and coupons in the declaration mentioned are a part of said series of bonds and coupons so issued as aforesaid.

And afterwards, and long before defendant or their predecessors in office, or any duly authorized agent of said county, had any notice of the transfer of said bonds and coupons to plaintiff, the said legislature passed another act, entitled "An act to amend the several acts now in force concerning the Grenada, Houston and Eastern Railroad Company & for other purposes," approved the 27th January, 1872, whereby the charter of the Grenada, Houston and Eastern Railroad Company was materially and fundamentally altered and changed, and whereby new and different and increased responsibilities and hassards were
38 added and assumed, in this, among other things, to wit, that the name of the "Grenada, Houston and Eastern Railroad Company" was changed to "The Vicksburg and Nashville Railroad Company," and all subscriptions for stock and bonds and titles to all property of every kind, held and owned by said Grenada, Houston & Eastern Railroad Company, and the said last-mentioned company, was authorized to construct an extension of said railroad from the town of Grenada to the city of Vicksburg, and to establish and operate a branch line of said railroad from some point on the main line running in a western direction to the Mississippi River to a point opposite to Emmet, in the State of Arkansas, or to such other point as the directors might select, and was also authorized to own and hold, or charter in whole or in part, one or more steamboats, or other water-craft for navigating the Mississippi, the Yazoo, or the Tennessee River' and their tributaries, and to transfer persons and property upon the said rivers and their tributaries, within or without the limits of the State of Mississippi, upon such terms as the board of directors may deem proper, all of which was accepted and adopted by the Grenada, Houston & Eastern Railroad Company, which thereby became and is merged into the Vicksburg and Nashville Railroad Company, and all of which was without the consent of the defendant' or their predecessors in office, or any duly authorized agent or agents of said Calhoun County.

39 Wherefore said defendant says that said county of Calhoun is released from said subscription, and bonds and coupons, & the same are void. And this said defendant is ready to verify.

Wherefore, &c.

H. A. BARR,
Att'y for Def't.

Filed May 4th, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 5th day of July, A. D. 1875, a demurrer was filed to the foregoing pleas in the words and figures following to wit:

Demurrer to 10th plea.

In the district court of the U. States, at June term, 1875.

UNITED STATES OF AMERICA,
Northern District of Mississippi:

WM. B. GALBRAITH
v. } 3107.
BOARD OF SUPERVISORS, &C., CALHOUN COUNTY.

And the said plaintiff, as to the said plea of the said defendants, by it tenthly above pleaded, saith that the same in manner & form as pleaded & the matters therein contained & set forth are not sufficient in law to bar the plaintiff of his aforesaid action against it, & that he is not bound by law to answer the same, and this he is ready to verify.

Wherefore he prays judgment, &c.

And the defendant shows to the court here the following special
40 cause of demurrer to said plea—1st. that said plea amounts to the general issue; 2d, that said plea is in other respects informal, uncertain, & insufficient, &c.

HARRIS & GEORGE,
Att'ys for Pl'ff.

Demurrer to 11th, 12th, 13th, & 14th pleas.

And the said plaintiff, as to the said pleas of the said defendants by them eleventhly, twelfthly, thirteenthly, & fourteenthly above pleaded, saith that the same, in manner & form as pleaded & the matters & things therein contained & set forth, are not sufficient in law to bar the plaintiff of his aforesaid against them, & that he is not bound to answer the same by law, & this he is ready to verify.

Wherefore he prays judgment, &c.; & the said plaintiff shows to the court here the following special cause of demurrer to said pleas: for that in & by said pleas defendants seek to put in issue matters not properly issuable; & also that said pleas are in other respects uncertain, informal & insufficient, &c.

HARRIS & GEORGE,
Att'y for Pl'ff.

Filed 5 July, 1875.

G. R. HILL, *Clerk.*

And afterwards, to wit, on the 12th day of July, A, D. 1875, the same being a day of the regular June term of said court, A. D. 1875, a judgment was entered in said cause in the words and figures following, to wit:

41 *Judgment.*

WM. B. GALBRAITH
v. } 3107.
THE BOARD OF SUPERVISORS OF CALHOUN County.

This cause coming on to be heard on the demurrers of the plaintiff to the five several pleas of the defendants lately pleaded according to the

judgment of this court heretofore rendered herein on the demurrers of the plaintiff to the pleas of the defendant first before pleaded to the plaintiff's action, whereby it was ordered that the defendant plead over, to wit, pleas numbered 10, 11, 12, 13, & 14. It is considered by the court that said demurrers be sustained, and thereupon the defendant withdraws his pleas first-above pleaded, that is, to pleas replied to by plaintiff, to wit, pleas numbered 1, 3, & 9, saying he had nothing by way of proof to offer under the issues made by said pleas, save the matters specially offered by pleas to the actions and to which demurrers have been sustained, which withdrawal is allowed by the court; and the defendant, saying nothing further in bar or preclusion of the plaintiff's right to recover, it is therefore considered by the court that the said plaintiff recover of the defendant the sum of nine thousand seven hundred & sixty-one $\frac{21}{100}$ dollars & costs of suit, with interest at the rate of eight per cent. per annum from this date, for which let execution issue.

And on the 14th July, 1876, a writ-of-error bond was approved by the court; which said bond is in the words and figures following, to wit:

42 UNITED STATES OF AMERICA,
Northern District of Mississippi, ss:

I, George R. Hill, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify that the foregoing forty-two pages contain a true & perfect transcript of all the proceedings in said court in the case of W. B. Galbraith vs. the Board of Supervisors of Calhoun County, from the declaration filed therein to the judgment, inclusive, as fully as the same appear on file and of record in my office.

Given under my hand and the seal of said court on this the 31st day of July, A. D. 1876.

[SEAL.] G. R. HILL, *Clerk.*

43 *Petition for writ of error.*

To the Hon. R. A. Hill, judge of the district court of the United States for the northern district of Mississippi, at Oxford:

Your petitioner, the Board of Supervisors of Calhoun County, show unto your honor that lately, at the district court of the United States for the northern district of Mississippi, at Oxford, in a suit depending in said court between William B. Galbraith, plaintiff, and the said Board of Supervisors of Calhoun County, defendant, a final judgment was rendered in favor of said plaintiff against said defendant on the 12th day of July, 1875, for nine thousand seven hundred and sixty-one dollars and twenty-one cents. Your petitioner alleges that there is error in said judgment, and prays for a writ of error to remove said suit and all the proceedings and judgment therein to the Supreme Court of the United States, and for citation and a transcript of the record thereof.

30th June, 1876.

H. A. BARR,
Att'y for Petitioner.

Let writ of error and citation issue this July 14th, 1876.

R. A. HILL, *Judge.*

44 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the northern district of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said district court before you, between William B. Galbraith, plaintiff, against the Board of Supervisors of Calhoun County, defendant, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2d Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, the 14 of July, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.]

G. R. HILL,
Clerk of the Dist. Court of the said District.

Allowed by—

R. A. HILL.
District Judge.

45 To William B. Galbraith or his attorni's of record, Martin & Bates and Harris & George:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 2d Monday in October, A. D. 1876 next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Mississippi, at Oxford, wherein the Board of Supervisors of Calhoun County is plaintiff in error, and you, the said William B. Galbraith, are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. R. A. Hill, judge of said district court of the United States for the northern district of Mississippi, this 14th day of July, 1876, and the seal of said court.

[SEAL.]

R. A. HILL, *Judge.*

46 We acknowledge service of this citation on us this 22 July, 1876.

HARRIS & GEORGE,
Att'ys for Galbraith.

THE UNITED STATES OF AMERICA,
Northern District of Mississippi:

Personally appeared before me, G. R. Hill, clerk of the district court of the United States for the northern district of Mississippi, H. A. Barr, who makes oath that the within citation was duly served upon Mess'rs Harris & George, attornies of record for William B. Galbraith, and that the above acknowledgment of service of the same was duly made and signed by them on the 22d July, 1876.

H. A. BARR.

Sworn to & subscribed before me 31st July, 1876.

G. R. HILL, *Clerk.*

46½ Clerk's fee for transcript, $20.30, paid by board of supervisors of Calhoun County.
July 31st, 1876.

G. R. HILL, *Clerk.*

(Indorsement on cover:) No. 197. The Board of Supervisors of Calhoun County, plaintiff in error, vs. W. B. Galbraith. N. Miss. C. C. U. S. Filed 7th October, 1876.

Supreme Court of the U. S.

No. 197.

SUPERVISORS OF CALHOUN COUNTY

vs.

WM. B. GALBRAITH.

Brief of P. PHILLIPS for Plaintiff in Error.

R. O. Polkinhorn, Printer, Washington, D. C.

Supreme Court of the U. S.

No. 197.

SUPERVISORS OF CALHOUN COUNTY

vs.

WM. B. GALBRAITH.

Brief of P. PHILLIPS for Plaintiff in Error.

The action of defendant in error was on certain bonds issued by the Supervisors of Calhoun County in the following form:

"Be it known that the County of Calhoun, State of Mississippi, is indebted unto, and promises to pay, the Grenada, Houston, and Eastern Railroad Company, or bearer, at the agency of said company in the city of New York, ten years from the date thereof, $500 lawful money of the United States, with interest at the rate of eight per cent., payable semi-annually on the 1st of March and September of each year, on the presentation and surrender of the proper coupon hereto annexed."

It is executed on 1st September, 1871, and recites that it is one of a series delivered to said corporation to pay the amount subscribed by the county to the stock of said company, "in pursuance of the act February 10, 1860, and the act amendatory thereto, 25 March, 1871, and in obedience to a vote of the

people of said county at an election held in accordance with the provisions of said acts."

The county filed several pleas, all of which were demurred to, and judgment rendered for demurrant.

The second plea denied the validity of the bond on the ground that it was made payable to *bearer*, and so not within the power conferred by the act of 1871, under which it was issued.

It will be seen that the bond recites two acts as the source of power, to wit, the acts of 10 February, 1860, and 25 March, 1871.

These acts are cited in the brief of the defendant in error.

The act of 1860 contains no authority to issue bonds. It provides merely for a subscription to the stock of the railroad, if a majority of those voting shall favor the same, to be paid for by taxation.

The only authority to issue the bonds is to be found in the 4th section of the act of 1871, which directs that they shall be "signed by the president of the board of supervisors issuing the same, *and be made payable to the president and directors of the Grenada, Houston, and Eastern Railroad Company, and their successors and assigns, and may be assigned, sold, and conveyed, with or without guarantee of payment,* by said president and directors, or *may be mortgaged* in like manner at their discretion, as they may deem best for the company." Sec. 4.

Again, it is provided by the 7th section that the

bonds which may be issued to, or received by, (the railroad company) * * * shall be deemed to be the property and assets of the company, "and may be assigned, transferred, sold, and conveyed or mortgaged by said company, as may be deemed best."

We submit that this careful description is irreconcilable with the idea that the legislature intended that the supervisors might issue bonds payable to bearer which pass from hand to hand by mere delivery.

The act was passed with full knowledge of a long series of decisions by this court, commencing in 1858, declaring county and municipal bonds payable to bearer to be commercial paper, which in the hands of a *bona fide* holder exeluded all defenses, however just and equitable, which might exist against the company to which they had been issued. Such a holder was bound only to look whether the power to issue them was granted.

The act of 1871 was intended carefully to guard the county against these consequences. If any doubt remained as to the intent of the legislature, it would be removed by reference to the act of 1822, passed soon after the State was admitted into the Union, and continued in its statutes to the present time.

Code of 1871, Sec. 2228: "All promissory notes, and all other writings for the payment of money or any other thing, may be assigned by endorsement, whether the same be payable to order or assigns or not, and the assignee or indorser may maintain such action thereon, in his own name, as the assignor or indorser could have maintained; and in

all actions on any such assigned promissory note, bill of exchange, or other writing for the payment of money or other thing, the defendant shall be allowed the benefit of all want of lawful consideration, payments, discounts, set-offs, made, had, or possessed against the same previous to notice of assignment, in the same manner as though the suit had been brought by the obligee or payee."

The judicial construction of this act has been long settled. It is declared to be anti-commercial in its character. It lets in the defense to all the classes of paper therein described, and holds that the only kind of paper not included in its provision is that which is made payable to *bearer*.

In *Kershaw* vs. *Bank*, 7 How., 391, decided in 1843, SHARKIE, C. J., said it is the "clear intention of the statute to make a radical change in commercial usage in relation to all negotiable paper. This law is anti-commercial in its character, and the reason of the law applies as well to bills of exchange as promissory notes."

Obligations payable on their face to bearer, and which need no assignment, are, as we have stated, declared not to be within the purview of the statute.

Craig vs. *City Vicksburg*, 31 Miss., 244;
Mercier vs. *Collon*, 34 Miss., 64;
Monstead vs. *Davis*, 40 Miss., 787.

Nor does the statute include bills of exchange drawn on and in favor of parties in another State. The court say: "By the law, Merchant, the indorser of a bill of exchange, who has paid a consideration,

takes it freed from the equities existing between the antecedent parties. *But our statute is otherwise.* This radical innovation on commercial law has been uniformly held to apply to negotiable paper purely domestic.

Harrison vs. *Fike Brothers*, 48 Miss., 56; decided in 1873.

The only Mississippi case cited by defendant in error to support the ruling on this plea is *City of Vicksburg* vs. *Lombard*, 51 Miss., 111.

The bonds in this case were made payable to "bearer." The power conferred on the city was to provide by ordinance "*for the issuance of bonds not to exceed* $500,000."

These bonds were assailed as being payable to bearer, and, therefore, unauthorized. In answer to this objection, the court, after reviewing the charter and acts of legislature, say: "If it were doubtful whether the *express power was conferred* (to issue bonds payable to bearer), *and we think it is not*, after the city authorities have placed the construction upon the law that they had the power, and after the Legislature that granted the charter has placed the same construction upon it, the court should conform to this practical construction as settling this doubt."

We submit that the citation of this case in no wise aids the argument of the defendant in error, but, on the contrary, supports the proposition contained in the plea.

It may also be here observed that there is a marked distinction between a county and a municipal corporation. In view of the complex and diversified pow-

ers usually conferred upon chartered corporations, there has been a stronger tendency on the part of the courts to hold that such corporations have an incidental or implied power to issue commercial securities.

The word "assigns," asused in the acts of 1871 and 1822, has a well-defined meaning in Mississippi.

In *Craig* vs. *City of Vicksburg*, 31 Miss., 247, the Court cites Judge STORY as saying: "A note payable to bearer is often said to be assignable by delivery, but in incorrect language. There is no assignment in the case. It passes by mere delivery, and the holder never makes any title by or through any assignment, but claims merely by delivery."

When, therefore, the act of 1871 uses the word "assigns" it meant a holder by assignment, within the anti-commercial law of the State.

The learned judge, in sustaining the demurrer, lays stress upon the fact that there was *no restriction* in the act as to the *place of payment*, and as they were, in fact, made payable in New York, where obligations of this character are unimpeachable in the hands of a *bona fide* holder, then the objection to them must fail.

The simple answer to this is, if we are right in the proposition that the bond authorized to be issued was not, in effect, one payable to "bearer," but was one included in the anti-commercial law of the State, then the county, by its voluntary act in designating the place of payment, could not change the character of the instrument authorized to be issued.

On the other hand, if the legal effect of the authority conferred authorized a bond payable to bearer, there is no need for the argument derived from the place of payment to establish its negotiability.

In concluding this head of discussion, we call attention to the decisions of this court in *Police Jury* vs. *Britton*, 15 Wall., 566; *Mayor* vs. *Ray*, 19 Wall., 468.

In these cases it is shown that the power to issue commercial paper by boards and trustees of political districts has been, in very many instances, the means of imposing upon counties and other local jurisdictions burdens of a most fraudulent and iniquitous character, and of which they would have been summarily relieved had not the obligations been such as to protect them from question in the hands of *bona fide* holders.

"As such (say the Court) we have been reluctantly compelled to sustain them, but *only on the ground that the power to issue them had been expressly, or by necessary implication, conferred by the Legislature.*"

Dillon on Municip. Corp., § 406.

We submit, therefore, that the bonds in question were not within the power conferred by the act of 1871, and are therefore void even in the hands of a *bona fide* holder; and it was therefore error to sustain the demurrer to the plea.

8th, 9th

We are now to consider the 4th, 5th, 6th, 7th pleas which deny the validity of these bonds on other grounds.

The act of 1860 gave authority to four named counties (Calhoun being one), to subscribe to the capital stock of the railroad, provided that at an election on a specified notice "a *majority of the qualified voters voting* shall be in favor of such subscription;" and the act further provides, "but if a majority of those voting shall be opposed to such subscription the same shall not be made."

Shortly after the passage of the act an election was held and the majority voted *against the subscription.*

Nine years thereafter, to wit, in 1869, when the voting population had been enlarged by the enfranchisement of the slaves, another election was held, by order of a board or commission appointed by a Federal military commander, at which a *majority of those voting* was in favor of subscription.

On the 1st December, 1869, the people of the State adopted a constitution with these provisions:

Article 12.

SEC. 5. The credit of the State shall not be pledged or loaned in aid of any person, association, or corporation, nor shall the State hereafter become a stockholder in any corporation or association.

SEC. 14. The Legislature shall not authorize any county, city, or town to become a stockholder in, or to lend its credit to, any company, association, or corporation, *unless two-thirds of the qualified voters* of such county, city, or town, at a special election, or at a general election to be held therein, shall assent thereto.

Nothing was done, prior to the adoption of the constitution, but to hold the election in which the majority of those voting favored a subscription.

Such a vote to subscribe did not constitute a *contract* so as to prevent the operation of the constitution which prohibited a county from becoming a stockholder in, or lending its credit to, a company, except on the vote of two-thirds of the qualified voters.

In the case of *Aspinwall* vs. *County of Davies*, 22 How., 364, the question was presented under the constitution of Indiana, which provided—

"No county shall subscribe for stock in any incorporated company unless the same shall be paid for at the time of such subscription, nor shall any county loan its credit to any incorporated company, nor borrow money for the purpose of taking stock in any such company."

The phraseology of this provision differs from that used in the constitution of Mississippi, but the general legal effect is the same.

In the former it is said the "Legislature shall not authorize any county;" in the latter, "no county shall," &c.

As a county possessed no power to subscribe, except by legislative authority, we regard these two modes of expression to be equivalent to each other.

Now, the case under the Indiana constitution presented the fact that prior to the adoption of the constitution the county, by act of the Legislature, was authorized to subscribe for stock *and issue bonds*, provided a majority of the qualified voters assented there-

to. The election was held and the required vote obtained, but the actual subscription and issue of the bonds was made subsequent to the adoption of the constitution, and the question was whether the constitution had not abrogated the power conferred by the prior act.

The solution of this question depended upon the inquiry whether the vote to subscribe constituted a contract.

It was held not to be a contract, and so the bonds were declared to be void for want of authority to issue them.

The same doctrine was held in *Town of Concord* vs. *Savings Bank*, 92 U. S., 625.

The bearing of these two decisions is made palpable by the judgment in the case of the *County of Moultrie* vs. *Savings Bank*, 92 U. S., 632.

Here no popular election was required. The power to subscribe was conferred upon the board. The board, by resolution, made the subscription, and this subscription was duly accepted by the railroad. All this was done prior to the adoption of the constitution relied on as prohibiting the subscription.

The subscription thus made was held to be *a contract* which the constitution could not impair; for, say the Court, "a constitution can no more impair the obligation of a contract than ordinary legislation can."

Again, "in either aspect of the case (say the Court), there was an authorized contract existing between the county and the railroad company when the new con-

stitution came into operation. No matter whether the contract was a subscription or an agreement to subscribe, it was not annulled or impaired by the prohibition of the constitution. The delivery of the bonds was no more than the performance of the *contract*."

For these reasons (say the Court), it is in vain to appeal to the decisions made in *Aspinwall* vs. *County of Davies*, and *Town of Concord* vs. *Savings Bank*. In neither of these cases was any *contract* made before the authority to make one was annulled. We do not assert that the constitutional provision did not abrogate the authority of the board to make such a subscription. On the contrary, we think it did. But we hold that *contracts* made under the power while it was in existence were valid contracts, and that the obligation assumed by them continued after the power to enter into such contracts was withdrawn."

MILLER, DAVIS, and FIELD, justices, dissented.

And so it was held in *Falconer* vs. *Railroad*, 69 N. Y., 492, in which the constitutional amendment adopted in 1875 prohibited any county from becoming a stockholder in any corporation. The Court said:

"It is not to be questioned that as soon as the amendment was adopted, all action by town not finished towards the issue of bonds in aid of any corporation at once fell to the ground, unless by operation of law, or in pursuance of some valid agreement, a right had been created to have such action perfected by the issue of the bonds."

These decisions we consider as justifying the posi-

tion that though a majority voted to subscribe prior to the adoption of the constitution, it was not within the power of the Legislature, after its adoption, to authorize an issue of bonds on that vote, the express prohibition being, "the Legislature shall not authorize any county to become a stockholder in, or lend its credit to, any company, unless *two-thirds of the qualified voters* shall assent thereto."

In several of the new constitutions containing a similar inhibition, special provision is made that it shall not apply to elections for subscriptions previously held. Here there is no such reservation.

It may well be questioned whether, independent of the constitutional provision, the election held in 1869 possessed any validity. The act provides for "an election," and declares that if a majority of those voting shall be opposed to such subscription, the same shall not be made.

The first election exhausted the power, and no new election should have been held until a new authority was conferred.

It is not safe to say that under such a power an interested or corrupt board might harrass the people by frequent elections until they succeeded in forcing a subscription.

The peculiar circumstances of the election we are now considering is a fit illustration of the danger of such a construction.

The case of *Society Savings* vs. *City of New Lon-*

don, 29 Conn., is cited to sustain the doctrine that one election does not exhaust the power.

There the authority was conferred on the board itself to subscribe. In construing the act authorizing the subscription, the court say, "The language of the proviso seems to be decisive of the meaning of the Legislature. It is 'until'—that is, whenever, as soon as, two-thirds of the voters give their approval."

As the right to hold a second election is expressly placed by the court on authority for the same to be found in the act, there is a clear implication that a second election would have been held void if such authority had not been found in the act itself.

See *O'Neall* vs. *Thornton*, 6 Cranch., 66, in which there is a strict enforcement of the principle that a statutory power once executed is exhausted.

[redacted] Ex Parte Randolph 2 Brock 473.

We now pass to the consideration of the act of 1871, under which alone the authority to issue the bonds is derived.

Under the act of 1860, certain named counties were authorized to subscribe. The act of 1871 extended these provisions to any county through which the road should pass.

The elections under the act were directed to be conducted in all things as required in the act of 1860, and of the *constitution* and laws *in force at the time so held*.

The 4th section then provides that it should be

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The elections under the act were directed to be conducted in all things as required in the act of 1860, and of the *constitution* and laws *in force at the time so held.*

The 4th section then provides that it should be

lawful for the board of supervisors of any county which shall have voted a tax, as provided by this act or the act of 1860, to issue bonds for such sums as may be deemed necessary "to meet, pay off, and discharge the *subscriptions* of said counties for the capital stock" in the railroad company "which have been, or may hereafter be, subscribed." * * *

The county of Calhoun is not named in this act, but is claimed to be included in the general description of "Any county which shall have voted a tax," &c., &c.

The subscription of Calhoun County was not made until January, 1870, and the bonds were delivered 1 September, 1871.

This being subsequent to the adoption of the Constitution, was invalid, as from that time no such subscription could be made but by the assent of two-thirds of the qualified voters.

The act itself recognizes this in providing that the elections under it shall be held as required by the Constitution, &c., in force at the time so held.

The force of the proposition as to the invalidity of the subscription of 1870, is recognized by the learned judge below by the mode in which he considers and answers it. Thus—

"The Constitution was nugatory until the State government created by it was authorized by Congress, which was not done until after that time (1 January, 1870). So that it cannot be held that the subscription was in anywise affected by the provision of the Constitution."

This presents the anomaly of a claim of power derived from the legislature, while denying the existence of the Constitution by which that legislature was created.

The act of Congress referred to by the judge was passed on 23 February, 1870, and provides only for representation in Congress, it satisfactorily appearing that the constitution adopted by the people was "republican."

If the constitution was inoperative as the fundamental law of the State in the provisions under consideration, it was equally so as to all others.

If it only took effect when the State was admitted to representation, then all legislation under that constitution was subject to the same contingency.

It is monstrous to suppose that the people of the State had no system of laws for their government as long as the State was excluded by Congress from representation.

Before Texas was admitted to representation, a bill was filed in this court under an act of her legislature for the recovery of certain bonds, and her autonomy was fully recognized.

Texas vs. *White*, 7 Wall., 700.

To understand the relation of the county to the railroad company under the provisions of the act of 1860, we cite section 2, not presented in the brief of defendant in error.

"The board of police of any county having sub-
"scribed for stock (in the G. H. & E. R. R. Co.), ac-
"cording to the provisions of the first section of this

"act, is hereby authorized to assess and collect the "amount of subscription so made on the taxable prop- "erty of said county; and the sheriff or tax collector "shall issue to each tax payer a separate receipt for "the amount of said railroad tax."

The election held 1869 under this act, by which the majority voted to be taxed to pay the amount to be subscribed, we have argued was a nullity as the power had been exhausted by the first election.

If in error in this, then we say that the vote constituted no obligation between the county and the railroad that it should become a stockholder therein.

If, then, the act of 1871 is to be construed as including the county of Calhoun, empowering it to issue bonds in payment of the subscription, and thus to become a stockholder, it conflicts with the constitutional inhibition that the legislature shall not authorize any county to become a stockholder, &c., unless two-thirds of the qualified voters shall assent thereto.

The act so construed would also conflict with the other inhibition, "or to lend its credit."

It is insisted by defendant in error that the restriction on the legislature, as contained in these latter words, extends only to a "*guarantee* of railroad paper or obligations."

This would be a very narrow construction considering the condition of the country at the time these provisions were adopted. States, counties, and towns had become bankrupt by the credit given to railroads in the issue of their bonds.

To suppose that the object of the framers of the constitution was merely to inhibit the authority to guarantee the bonds of the railroads, leaving full power in the legislature to empower counties and towns to issue their own bonds on a vote of a majority or without any vote, would leave the greater evil without redress, while the lesser was carefully guarded by providing for the assent of two-thirds of the qualified voters.

Assignment of Errors.

The sustaining the demurrer to the 2d, 4th, 5th, 6th, ~~and~~ 7th, 8th, 9th pleas.

P. PHILLIPS,
for Plaintiff in Error.

NO......

SUPREME COURT OF THE UNITED STATES.

—OO—

THE BOARD OF SUPERVISORS OF THE COUNTY OF CALHOUN, Plaintiffs in Error,

vs.

WILLIAM B. GALBRAITH.

Argument for Defendant in Error.

WILEY P. HARRIS & EDWARD MAYES,
Attorneys.

JACKSON, MISS:
CHARLES WINKLEY, BOOK AND JOB PRINTER,
CAPITOL STREET,
1877.

THE BOARD OF SUPERVISORS OF THE COUNTY OF CALHOUN, Plaintiffs in Error,

vs.

WILLIAM B. GALBRAITH.

AN ACT to be entitled an Act to aid in the construction of the Grenada, Houston and Eastern Railroad.

SEC. 1. *Be it enacted by the Legislature of the State of Mississippi*, That the Board of Police of the several counties, Yalobusha, Calhoun, Chickasaw and Monroe, through which the Grenada, Houston and Eastern Railroad may pass, may, for their respective counties, open (*upon*) such conditions as they may think proper, subscribe for capital stock not to exceed in amount two hundred thousand dollars, for any one county; *Provided, however*, That an election shall be held in the county for and on account of which stock is proposed to be subscribed by the qualified electors thereof, at the regular precincts of said county, twenty days' notice of the time of holding such election, and of the amount proposed to be subscribed, and in what number of installments being first given by the board of police; and if at said election a majority of the qualified electors voting shall be in favor of such subscription, then said board shall make such subscription for and in behalf of the county, for the amount specified by the president of said board of police, subscribing the amount so specified to the capital stock of said company, but if a majority of

those voting shall be opposed to such subscription, the same shall not be made.*

* * * * * *

Approved, Feb. 10, 1860.

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*The remaining sections merely provide for the collection of the amount subscribed by taxation, the mode of collection, &c.

—o—

A BILL to be entitled an act to amend an act entitled "an act to aid in the construction of the Grenada, Houston, and Eastern Railroad," approved February 10, 1860.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That the act entitled an act to aid in the construction of the Grenada, Houston and Eastern Railroad, approved February 10, 1860, shall apply in all its provisions to Grenada county, and also to any other county in this State, through or near which said railroad may pass, and to the officers of the same, as the said act is intended to apply to the counties therein named, and it shall be and is hereby made the duty of the board of supervisors of Grenada county, and of the several counties along the line of said railroad as above designated, upon the petition of twenty-five or more citizens, to cause an election to be held in their respective counties to take the sense of the legal voters thereof, whether a sum not exceeding two hundred thousand dollars to each county, shall be subscribed to the capital, stock of said railroad company to be paid by taxation, and to do all other acts and things by which the said act, of which this act is amendatory, authorizes or requires of the boards of police of the counties named in said Act. And wherever in said Act, any duty is required of, or act authorized to be performed by the boards of police or the president thereof of any of the counties therein named, the same shall apply to the board of supervisors of the different counties, and to the president thereof. And all such elections when

held, shall be conducted in all things as required in the act of which this is amendatory, and of the constitution and laws of this State in force at the time so held.

SECTION 2. (*Provides that any incorporated town on the line of the road may subscribe for stock, provided "a constitutional majority of two-thirds" of votes polled, at an election held, &c.*)

SEC. 3. (*Provides that such towns may levy taxes for payment of their subscription, so made.*)

SEC. 4. *Be it further enacted*, That it shall and may be lawful for the boards of supervisors of any county which shall have voted a tax as provided by this Act, or of the act to which this Act is amendatory, to issue bonds due and payable at such times as said boards of supervisors may deem best for the tax-payers of their respective counties, not to extend beyond ten years from the date of issuance, for such sums as said boards of supervisors may deem necessary to meet, pay off and discharge the subscriptions of said counties, respectively, for capital stock in the Grenada, Houston and Eastern Railroad Company, which have been, or which may hereafter be subscribed for by said boards of supervisors, or by the boards of police, (as the case may be,) respectively, not to exceed the total sum of such stock subscriptions, which said bonds shall be signed by the president of the board of supervisors issuing the same, and be made payable to the president and directors of the Grenada, Houston and Eastern Railroad Company, and their successors and assigns, and may be assigned, sold, and conveyed with or without guarantee of payment by said president and directors, or may be mortgaged in like manner at their discretion, as they may deem best for the company.

SEC. 5. (*Provides for issuance of like bonds by incorporated towns subscribing.*)

SEC. 6. *Be it further enacted*, That any and all of the bonds authorized to be issued by this act may be drawn and issued with coupons of interest attached, at the rate of interest not to exceed ten per cent. per annum from the date of issu-

those voting shall be opposed to such subscription, the same shall not be made.*

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held, shall be conducted in all things as required in the act of which this is amendatory, and of the constitution and laws of this State in force at the time so held.

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SEC. 3. (*Provides that such towns may levy takes for payment of their subscription, so made.*)

SEC. 4. *Be it further enacted*, That it shall and may be lawful for the boards of supervisors of any county which shall have voted a tax as provided by this Act, or of the act to which this Act is amendatory, to issue bonds due and payable at such times as said boards of supervisors may deem best for the tax-payers of their respective counties, not to extend beyond ten years from the date of issuance, for such sums as said boards of supervisors may deem necessary to meet, pay off and discharge the subscriptions of said counties, respectively, for capital stock in the Grenada, Houston and Eastern Railroad Company, which have been, or which may hereafter be subscribed for by said boards of supervisors, or by the boards of police, (as the case may be,) respectively, not to exceed the total sum of such stock subscriptions, which said bonds shall be signed by the president of the board of supervisors issuing the same, and be made payable to the president and directors of the Grenada, Houston and Eastern Railroad Company, and their successors and assigns, and may be assigned, sold, and conveyed with or without guarantee of payment by said president and directors, or may be mortgaged in like manner at their discretion, as they may deem best for the company.

SEC. 5. (*Provides for issuance of like bonds by incorporated towns subscribing.*)

SEC. 6. *Be it further enacted*, That any and all of the bonds authorized to be issued by this act may be drawn and issued with coupons of interest attached, at the rate of interest not to exceed ten per cent. per annum from the date of issu-

ance; and when so issued the said bonds may be, by the boards of supervisors, or by the mayor and selectmen issuing the same, paid over and delivered to the president of the Grenada, Houston and Eastern Railroad Company, in payment and in satisfaction for the stock subscription of the county or corporation so issuing them, to the extent of the principal sum of said bonds. And whenever any such subscription for stock shall have been so paid off and discharged by the issuance and delivery of bonds as provided for in this Act, the board of supervisors, or the mayor and selectmen so issuing, shall take from the president and directors of said railroad company proper certificates of stock in said company for the number of shares so paid for, and the stock so paid for shall be deemed and held to be the property of the county or the corporation, as the case may be, so paying for the same, until assigned or transferred as authorized by this act, or the Act of which this act is amendatory.

SEC. 7. *Be it further enacted*, That all bonds which may be issued to, or received by the president and directors of said railroad company, as provided for in this Act, and also all lands which may be conveyed or mortgaged to said company in payment of subscriptions for stock, or by donations, shall be deemed and held to be property and assets of said company and may be assigned, transferred, and sold, and conveyed or mortgaged by said company as the president and directors thereof may deem best for the company.

SEC. 8. *Be it further enacted*, That it shall and may be, and is hereby made the duty of the boards of supervisors of the different and several counties, and of the mayors and selectmen of the incorporate towns, respectively, after they have subscribed for capital stock in the Grenada, Houston and Eastern Railroad Company, as authorized by this act, or by the act of which this is amendatory, within due time, and in a proper manner, to cause to be assessed, levied and collected, from the proper tax-payers of their respective counties or

towns, as the case may be, a sufficient amount of railroad taxes to meet, pay off and discharge such stock subscriptions, and in good faith as the same falls due, cause to be paid off and satisfied to the party or parties, at the time lawfully entitled to receive the same, all moneys, principal and interest, which may become due and owing for subscriptions for stock, or for bonds and coupons of interest issued and delivered in payment of the same.

SEC. 9. (*Authorizes the railroad company to connect, or consolidate, with any other railroad company, when the board of directors deems it best.*)

SEC. 10. (*Confers the powers of boards of police and their presidents, on boards of supervisors and their presidents; and requires mayor and selectmen of subscribing towns to exact a bond of the person appointed to collect railroad taxes.*)

SEC. 11. *Be it further enacted*, That all laws of this State conflicting with the provisions of this act are hereby repealed, and that this Act take effect and be in force from and after its passage.

By Limitation, March 25, 1871.

—o—

AN ACT to amend the several acts now in force concerning the Grenada, Houston and Eastern Railroad Company, and for other purposes.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi*, That the act of the said Legislature entitled "an Act to incorporate the Grenada, Houston and Eastern Railroad," approved February 6, 1860, be, and the same is hereby so amended and so extended as to authorize the said Grenada, Houston and Eastern Railroad Company, as now organized under the act aforesaid, incorporating said railroad company, to construct an extension of said railroad from the town of Grenada, in Grenada county, Mississippi, to the city of Vicksburg, by way of Yazoo City, or by such other route as the

board of directors of said company may deem best for the company aforesaid: and the said railroad company is hereby authorized and empowered to survey, lay out, and construct an extension of the said Grenada, Houston and Eastern Railroad, from the town of Grenada, to the city of Vicksburg, in the same way and manner, with like powers, rights and privileges, and under the same restrictions and liabilities as by the act incorporating said company, and by the several acts in aid of the construction of the Grenada, Houston and Eastern Railroad, the said company is authorized to lay out and construct said railroad from Grenada eastward to the Alabama line.

SEC. 2. *Be it further enacted*, That from and after the date hereof, the Grenada, Houston, and Eastern Railroad Company shall be known and designated as "the Vicksburg and Nashville Railroad Company," and by that name and style shall hereafter sue and be sued, plead and be impleaded in any court of this State; and all subscriptions of stock to, or bonds issued for the benefit of the Grenada, Houston and Eastern Railroad Company, are hereby made payable to and collectable by the Vicksburg and Nashville Railroad Company, and the title to all property of every description and kind whatsoever, whether real, personal or mixed, which by law heretofore vested in the Grenada, Houston and Eastern Railroad Company, is hereby invested in the Vicksburg and Nashville Railroad Company, to be collected, used, sold, transferred or enjoyed by said company as by law the Grenada, Houston and Eastern Railroad Company might have collected, used, sold, transferred or enjoyed the same; and all contracts and obligations heretofore entered into by the Grenada, Houston and Eastern Railroad Company, and all debts of whatsoever kind due by the said Company, are hereby made the debts contracts and obligations of the Vicksburg and Nashville Railroad Company, which shall be liable therefor, as fully in every particular as the Grenada, Houston and Eastern Railroad Company might have been; and all certificates of stock

in the Grenada, Houston and Eastern Railroad Company heretofore issued, shall entitle the holder to an equal number of shares in the Vicksburg and Nashville Railroad Company, and when required the secretary of the company shall take up the certificates of the Grenada, Houston and Eastern Railroad Company, and substitute those of the Vicksburg and Nashville, and the Act of the Legislature of Mississippi incorporating the Grenada, Houston and Eastern Railroad Company, approved February, 6, 1860, and the several acts of the Legislature passed to aid in constructing said Grenada, Houston and Eastern Railroad are hereby made to apply to the Vicksburg and Nashville Railroad Company, and to the several counties and towns through or near which the said Vicksburg and Nashville Railroad shall pass, with all their force and effect, as the same are intended to apply to the counties of Grenada, Calhoun and Chickasaw.

SEC. 3. (*Provides for municipal subscriptions to stock of Vicksburg and Nashville Railroad Company, the issuance of bonds therefor, assessment of taxes for payment of the bonds, and the issuance of stock certificates to the municipalities subscribing.*)

SEC. 4. (*Relates specially to a subscription made by Grenada county.*)

SEC. 5. *Be it further enacted*, That the said Vicksburg and Nashville Railroad Company, be, and the same is hereby authorized, under the same restrictions, and with the like privileges granted to the main line, to locate, construct, manage, control, equip, use and operate a branch line of said railroad from some point on the main line, running in a western direction to the Mississippi river to a point opposite to Eunice, in the State of Arkansas, or to such other point as the directors of said railroad company may select; and said company is further authorized to locate, construct, manage control, maintain, use, and operate a branch line of said railroad from some suitable point on the main line, in an eastern direction to

the Alabama line, and such other branches as said directors may deem proper in response to the wants of the country.

SEC. 6. (*Exempts property of company from taxation for thirty years; requires fertilizers to be transported gratis, &c.*)

SEC. 7. *Be it further enacted*, That said company is hereby authorized and empowered to own and hold, or charter in whole or in part, one or more steamboats or other water-crafts, for navigating the Mississippi, the Yazoo, or the Tennessee rivers and their tributaries; and with such steamboats or other water-crafts they may transfer persons and property, upon the said rivers and their tributaries within or without the limits of this State, upon such terms as the board of directors may deem proper, not inconsistent with the laws of this State or of the United States.

SEC. 8. (*Grants authority to cross or intersect with other roads, &c.*)

SEC. 9. (*Empowers the company to adopt its own gauge.*)

SEC. 10. (*Repeals inconsistent acts.*)

SEC. 11. (*Provides that this act take effect and be in force from and after its passage,*

Approved, January 27, 1872.

NEW CONSTITUTION OF MISSISSIPPI.

ARTICLE XII.

* * * * *

SEC. 2. The Legislature shall pass laws to exclude from office, and from suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors; and every person shall be disqualified from holding any office, or place of honor, profit or trust, under the authority of this State, who shall be convicted of having given or offered any bribe to procure his election or appointment.

* * * * *

SEC. 14. The Legislature shall not authorize any county, city, or town, to become a stockholder in, or to lend its credit to any company, association, or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a special election, or regular election, to be held therein shall assent thereto.

SEC. 15. The Legislature shall never authorize any lottery, nor shall the sale of lottery tickets be allowed, nor shall any lottery heretofore authorized be permitted to be drawn, or tickets therein to be sold.

* * * * *

RATIFIED, Dec. 1, 1869.

COPY OF BOND SUED ON.

"UNITED STATES OF AMERICA. No. 12.

500 County of Calhoun. 500

State of Mississippi.

Be it known, That the county of Calhoun, State of Mississippi, is indebted unto and promises to pay the Grenada, Houston and Eastern Railroad Company, or bearer, at the agency of said company, in the city of New York, three years from the date hereof, Five Hundred Dollars, lawful money of the United States of America, with interest at the rate of eight per cent. per annum, payable semi-annually, on the first day of March and September, of each year, on the presentation and surrender of the proper coupon hereto annexed. This Bond is one of a series of bonds issued and delivered to the Grenada, Houston and Eastern Railroad Company by Calhoun county, to meet and pay off the amount subscribed by said county to the capital stock of the railroad company aforesaid, in pursuance of an act of the Legislature of the State of Mississippi, entitled an act to aid in the construction of the Grenada, Houston and Eastern Railroad, approved, Feb. 10th, 1860, and of an act amendatory thereof, passed March 25th, 1871, and in obedience to a vote of the people of said county at an election held in accordance with the provisions of said acts. In witness whereof, the board of supervisors of said county have caused the signature of the president of said board to be hereto affixed, countersigned by the clerk, with his official seal affixed, and who have also signed the coupons hereto attached, at their office in Pittsboro, this first day of September, 1871.

JOEL ABNEY,
President Board of Supervisors.

J. S. RYAN, [L.S.]
Clerk.

ARGUMENT FOR DEFENDANT IN ERROR.

In support of the demurrers to the various special pleas in this case, I rely on the following propositions:

1. The issuance of bonds payable to the "Grenada, Houston and Eastern Railroad company, or bearer," is a substantial and sufficient compliance with the statute, if considered as a matter of mere form.

Mott *vs.* Hicks, 1 Cow., 513,
Brockaway *vs.* Allen, 17 Wend., 40.
Pitman *vs.* Kintner, 5 Blackf., 250.
Forbes *vs.* Marshall, 32 Eng L. and Eq., 589.
Maddox *vs.* Graham, 2 Mete. (Ky.,) 78.

2. Neither does the fact that they were so issued, instead of to the "President and Directors of, &c., their successors and assigns," invalidate the bonds by making them negotiable instruments contrary to the intention of the Legislature.

Maddox *vs.* Graham, 2 Mete., (Ky.,) 78.
Moran *vs.* Miami Co., 2 Black., 722.
Bushnell *vs.* Beloit, 10 Wisc., 156.*

The whole phraseology of the act of 1871, and all of its provisions, show that the Legislature intended negotiable instruments to issue. See Vicksburg *vs.* Lombard, 51 Miss., 111.

3. The authority to subscribe did not expire by lapse of

*Especial attention is called to this case, as the rule in Wisconsin on notes, &c., and the defenses thereto, is strikingly like that in Mississippi.

time; nor was it exhausted by any former negative vote that may have been cast.

It did not expire by lapse of time. Dwarris on Statutes, 152; Woods *vs.* Lawrence Co., 1 Black. 410; Society for Savings vs. New London, 29 Conn., 174†; Acts of Miss., 1871, *supra*, page 2, where the Act of 1860 is expressly recognized as being in force, and is amended.

Nor was it exhausted by any former negative vote that may have been cast. Society for Savings *vs.* New London, 29 Conn., 174; Smith *vs.* Clark Co., 54 Mo., 58. Moreover, the previous negative vote, if any such there was, was matter *in pais* with knowledge of which a *bona fide* purchaser cannot be charged under the recitals of the bond sued on.

Coloma *vs.* Eaves, 2 Otto, 484.

Humboldt *vs.* Long, Ib., 642.

Marcy *vs.* Oswego, Ib., 637.

4. Nor would the putting of the bonds on the market for purposes, and on terms, not authorized by law, vitiate them.

Pollard *vs.* Pleasant Hill, 1 Cent. Law Jour. No. 13.

Woods *vs.* Lawrence co., 1 Black, 386.

Mercer co. *vs.* Hackett, 1 Wall., 83.

Marcy *vs.* Towns, of Oswego, 2 Otto, 637.

5. Nor does the failure to give notice of the election at the three precincts named, invalidate these bonds.

Knox County *vs.* Aspinwall, 21 How., 544.

Humboldt *vs.* Long, 2 Otto, 642.

Marcy *vs.* Oswego, Ib., 637.

6. Neither would the fact that the board which ordered and held the election was appointed by the military commandant in Mississippi, invalidate the bonds. Whether rightfully or wrongfully in possession, they were at least in *colore officii*. They were officers *de facto* if not *de jure*. And the statutes

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† The force of this case will be seen by noting that the G. H. & E. R. R. Co., was chartered only four days before act of Feb. 10, 1860, was passed. See Acts 1872, sec. 2, *supra*.

of Mississippi, Code of 1857, page 138, art 194, fully covers the case.* See also, Vicksburg *vs.* Lombard, 51 Miss., 111.

7. Neither does the act of 27th of January, 1872, altering and extending the charter of the Grenada, Houston and Eastern Railroad Company, or the acceptance by the company, invalidate these bonds.

Nugent *vs.* Putnam co., 19 Wall., 241.
Thomas *vs.* Scotland co., 3 Dillon, C. C. R., 7.
Washburn *vs.* Cass, Ib., 251.

The case of Harshman *vs.* Bates co., 2 Otto, 569, differs from the case at bar by two essential particulars: 1st. The consolidation was there made *before* the subscription; 2d. The bonds on their face showed the objection.

Moreover, the consolidation was extinction; and the company was a different company. Here, thero, is merely a change of name, and an extension of privilege; the identity of the company is preserved.

As a common answer to all the objections which the foregoing special propositions are designed to meet and to one or two pleas not specially noticed, I cite the following authorities:

Comm'rs of Knox Co. *vs.* Aspinwall, 21 How., 543.
Bissell *vs.* Jeffersonville, 24 How., 287.
Moran *vs.* Miami Co., 2 Black, 722.
Gelpcke *vs.* Dubuque, 1 Wall., 201.
Van Hostrup *vs.* Madison City, Ib., 295.
Meyer *vs.* Muscatine, Ib., 393.
Rogers *vs.* Burlington, 3 Wall., 667.
Pendleton Co. *vs.* Amy, 13 Wall., 303.

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* "The official acts of any person in possession of any public office, and exercising the functions thereof, shall be valid and binding as lawful official acts, in regard to all persons interested therein, or effected thereby, whether such person be lawfully entitled to hold such office or not, and whether such person be lawfully qualified or not," &c.

Lexington *vs.* Butler, 14 Wall., 289.
Grand Chute *vs.* Winegar, 15 Wall., 355.
Lynde *vs.* The County, 16 Wall., 6.
St. Joseph Towns *vs.* Rogers, Ib., 655.
Chambers Co. *vs.* Clews, 21 Wall., 317, 321.
Coloma vs. Eaves, 2 Otto, 484.
Humboldt Towns *vs.* Long, Ib., 642.
Venice *vs.* Murdock, Ib., 494.
Moultrie Co. *vs.* Savings Bank, Ib., 631.
Kendall Co. case, decided October Term, 1876, not reported; and especially
Vicksburg *vs.* Lombard, 51 Miss., 111.

8. The bonds in question were ratified by act of January 27th, 1872, sec. 2.

Thompson *vs.* Lee Co., 3 Wall., 327.
City *vs.* Lamson, 9 Wall., 477.
Watson *vs.* Mercer, 8 Peters, 111.
Bissell *vs.* Jeffersonville, 24 How., 295.
St. Joseph Towns *vs.* Rogers, 16 Wall., 663.

9. The authority was ample, both to make the subscription and to issue the bonds on a *majority* vote, notwithstanding the provisions of sec. 14, art. 12, of the New Constitution, because

1st. That section does not repeal the Act of 1860, which authorized the subscription.

Cass *vs.* Dillon, 2 Ohio St., 609.
State *vs.* Union Towns, 8 Ohio St., 398.
Code of Missouri, p. 43.
State *vs.* Sullivan co., 51 Mo., 531. [349.
K. C., St. J. & C. B. RR. Co. *vs.* Alderman, 47 Mo.,
State *vs.* Nodaway Co. Court, 48 Mo., 339.
State *vs.* Macon Co., 41 Mo., 433.
New Const. of Miss., art. XII, secs. 2, 14, 15, &c.
Calloway Co. *vs.* Foster, Oct. Term, 1876.

The case of Aspinwall vs. Daviess Co., 22 How., 363, was

different from this. There, it was the *act of subscription* which was prohibited, not the *enactment of laws* permitting subscriptions. So, also, with Concord *vs.* Savings Bank, 2 Otto, 625. These cases sustain my position, rather than militate against it.

2d. The Act of 1871, which authorized the issuance of the bonds, is not antagonistic to that section. The Act provides four things: 1st. That the county of Grenada, or any other county along the line of the road, may subscribe stock, according to the provisions of the Act of 1860; 2d. That certain incorporated towns might subscribe, on condition that the two-thirds requird by the constitution voted in favor of the subscription; 3d. that the counties so subscribing, *and also those which have already subscribed*, may issue bonds in payment of their subscription; 4th. That towns so subscribing, may also issue bonds.

We have to do with that part of the statute only, which authorizes the issuance of the bonds by those counties which "shall have voted a tax as provided by the act to which this act is amendatory;" that is, the act of 1860. If this enactment be constitutional, it matters not whether the rest of the act be so or not, for the reason that the unconstitutionality of a part of a statute does not affect other and distinct provisions of the statute, not dependent on the unconstitutional parts, and capable of having operation without them.

Campbell *vs.* Union Bank, 6 How. (Miss.) 625.
Williams *vs.* Cammack, 5 Cushm., 209.
Brown *vs.* Beatty, 5 Geo., 227.
Isom *vs.* Miss. Cent. RR. Co., 7 Geo., 300.

This feature of the act of 1871 cannot of course, be challenged as conflicting with that clause of sec. 14, which prohibits the authorizing of any county, "to become a stockholder" in any company, &c. That authority was conferred by the act of 1860, and is not pretended to be conferred by the Act of 1871, so far as Calhoun county is concerned. The clause which must be discussed in this connection is the second; that

is, the clause prohibiting any authorizing by the legislature of any county "to lend its credit" to any company, &c.

The question then is, in brief, did the Legislature, in authorizing Calhoun county to issue bonds in payment of its previous subscription, infringe that provision of sec. 14, which prohibits the legislature from authorizing "any county * * * * *to lend its credit* to any company, association, or corporation, unless two-thirds of the qualified voters, &c.?

The whole verbiage of the statute shows that no such proceeding as a "lending of credit" was contemplated. The bonds, when executed, were to be used as so much cash, for the payment of the subscription; they were not to be *loaned*, not to be *advanced*. Sec. 6 says, "and when so issued, the said bonds may be * * * *paid over* and delivered to the president of the G., H. and E. RR. Co., *in payment and satisfaction for* the stock subscription of the county," &c. Again: "And whenever any such subscription for stock shall have been so *paid off and discharged* by the issuance and delivery of bonds," &c. Sec. 8, provides that the boards of supervisors shall levy a tax, to pay off the "bonds and coupons of interest which they may have respectively issued and delivered *in payment* of such stock subscriptions," &c. This shows that the issuance and delivery of bonds authorized, was to be, and was, a cash transaction; the bonds and coupons being invested with the efficacy and character of money. As well might it be said that the issuance of its notes by a bank is a lending of its credit to the holders of the notes; that the issuance of currency, such as the certificates of indebtedness (Alcorn money,) was a lending of the States' credit to the holders. Suppose the State were to resist payment of the Alcorn money on the ground that in issuing it, Sec. 5, art. 12, of the constitution, which provides that "the *credit* of the *State* shall not be pledged or *loaned* in aid of any *person*, association, or corporation."—had been violated; would not the defense be scouted as preposterous? Yet, as

the bonds of Calhoun county were issued "*in payment and satisfaction*" of the subscription, not as a security, not as an advance of aid; there is no substantial difference in the transactions. One might as well call an issuance of "greenbacks" a lending of the credit of the United States; or a sale of bonds by the government, the same.

There are three canons of constitutional and statutory construction, which will settle this matter:

1st. That the words and clauses of statutes and constitutions are to be construed according to their ordinary acceptation.

2d. That where a constitution is not entirely explicit in itself, and requires construction, it ought not to be so construed as to cripple the government and render it unequal to the objects for which it was declared to be instituted.*

3d. That the construction of the instrument should be such as to give all of its provisions a distinct effect, if it be possible.

Now, the very first and most obvious meaning of the clause that prohibits the *lending of credit* unless, &c., is, that a prohibition is imposed on the authorizing of a county *to guarantee railroad paper or obligations.* When A. accepts a draft of B's for accommodation, or endorses a note for the same purpose, in order that B. may borrow money thereon, he lends B. his credit; but when he gives his note to B. in payment of a claim of B's against him, it cannot be called such, even though he clearly understood that B. will discount the note. When the Illinois Central Railroad Company, a few years since, endorsed and guaranteed the consolidated mortgage bonds of the Mississippi Central Railroad Company, that was a lending of credit. When the State of Mississippi issued fifteen millions of her bonds for the avowed purpose of enabling the Union Bank to borrow money thereon, which bonds the bank itself was to pay, that was a lending of her credit.

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* 6 How. (Miss.) 600; 9 Wheaton, 1.

The foregoing construction is sustained by the interpretation rendered necessary by the third rule cited above. In order to effectuate the clause prohibiting the lending of credit, a meaning must be assigned to those words other than one which is necessarily included in the prohibition against becoming a stockholder. Now, the issuance of bonds in payment and discharge of a stock-subscription, is necessarily but a consequence of that subscription. Unless the subscription be made, no bonds can issue for that purpose. In prohibiting the subscription, the issuance of such bonds is necessarily excluded with it. Therefore, the proper interpretation of the words "lend its credit" is, to give them a meaning not included in, or dependent on, the other words, "become a stockholder," in any way, if it can be done. Such a meaning is attributed to them, when they are interpreted to mean, that no county shall endorse or guarantee railroad, or other, paper or obligations; for, if authorized by the legislature, that may be done without subscribing for stock.

One other view on this head, and I shall have done. Suppose it admitted, for sake of argument, that sec. 14 does apply to the acts of 1860 and 1871. What is the effect of it? And how does it touch these bonds? First: That section would not operate as a repeal of the act of 1860, *in toto*; but only to the extent that that act fixes the required vote at a majority of the votes polled, instead of a two-thirds vote of all the county. For two acts (or a constitution and an act) must be so construed that both may stand and harmonize, if possible; and where a repeal is allowed by implication at all, the extent of the repeal will be only so far as there is a plain and manifest repugnancy between them. Com'l Bank of Natchez vs. Chambers, 8 S. & M., 9; White vs. Johnson, 1 Cushm., 68.

The Constitution, therefore, being self-extending, merely alters the majority required for the subscription and execution of the bonds, from a majority vote to a two-thirds vote, and leaves the power to subscribe and to issue bonds intact, except

that it is subjected to that qualification. This is impliedly admitted by the pleas under discussion; for instead of pleading that there was no law in existence by whose provisions the bond could have been made, defendant pleads the want of the constitutional vote.

Such being the state of the law, how do these *bona fide* holders occupy any worse a position because of the want of a constitutional two-thirds vote, than because of a want of a statutory majority vote? The same rules of construction used in interpreting and applying statutes are used in the application and construction of constitutions.* So that when Aspinwall vs. Knox, Van Hostrup vs. Madison City, and other cases cited, *supra*, settle the point that where the act authorizing the subscription makes no special provision for the tribunal which shall settle the question of fact preceding the subscription, the proper tribunal to do so is the board of police or supervisors, they also settle the point that where the constitution which prescribes a certain pre-requisite in county subscriptions fails to designate the tribunal to settle the questions of compliance, the board of police or supervisors is the proper tribunal. However, no argument can be needed to show that the board of supervisors is the proper body to determine whether the constitutional vote has been polled, just as it was to determine whether the statutory one had been cast.

Now, a bond cannot be more than void If void for want of compliance with a statutory requirement, it is to the full as null as if void for want of compliance with a constitutional requirement. The case cannot be produced which holds that a nullity by operation of a constitution is more null than a nullity by operation of a statute, or is entitled to any more privileges or exemptions, or to any different rules of construction or disposition. There are no degrees of nullity.

Such being the case, and the board of supervisors being the

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* Dwarris on Statutes, p. 655.

judicial body designated by the law and the constitution to determine the question of vote, there is no earthly reason why the county should be permitted to show a failure to obtain the constitutional two-thirds vote, any more than it should be permitted to show a want of the statutory majority vote. Vicksburg vs. Lombard, 51 Miss., 111.

Respectfully submitted,

EDWARD MAYES.

WILEY P. HARRIS.

For Defendant in Error.